

**In The Matter Of:**

*City of Detroit, Michigan*

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*R. Craig Hupp*

*July 14, 2014*

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Page 1

1 UNITED STATES BANKRUPTCY COURT  
2 EASTERN DISTRICT OF MICHIGAN  
3 SOUTHERN DIVISION  
4  
5  
6 In re: ) Case No. 13-53845  
7 CITY OF DETROIT, MICHIGAN )  
8 ) Chapter 9  
9 Debtor )  
10 ) Hon. Steven W. Rhodes  
11  
12  
13 The Deposition of R. CRAIG HUPP,  
14 Taken at 21777 Dunham Road,  
15 Clinton Township, Michigan,  
16 Commencing at 8:10 a.m.,  
17 Monday, July 14, 2014,  
18 Before Melinda S. Moore, CSR-2258.  
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Page 2

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Page 4

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<p style="text-align: right;">Page 5</p> <p>1 TABLE OF CONTENTS</p> <p>2</p> <p>3 WITNESS PAGE</p> <p>4 R. CRAIG HUPP</p> <p>5 EXAMINATION BY MR. WATSON 6</p> <p>6 EXAMINATION BY MS. BADALAMENTI 59</p> <p>7 RE-EXAMINATION BY MR. WATSON 68</p> <p>8</p> <p>9 EXHIBIT PAGE</p> <p>10 (Exhibits attached to transcript.)</p> <p>11</p> <p>12 DEPOSITION EXHIBIT 1 12</p> <p>13 DEPOSITION EXHIBIT 2 21</p> <p>14 DEPOSITION EXHIBIT 3 36</p> <p>15 DEPOSITION EXHIBIT 4 40</p> <p>16 DEPOSITION EXHIBIT 5 55</p> <p>17 DEPOSITION EXHIBIT 6 56</p> <p>18 DEPOSITION EXHIBIT 7 58</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 7</p> <p>1 A. Yes.</p> <p>2 Q. So you know you have to answer verbally. The</p> <p>3 court reporter can't take down non-verbal</p> <p>4 gestures.</p> <p>5 A. Yes.</p> <p>6 Q. Would you tell us your educational background.</p> <p>7 A. I have a bachelor of science in mechanical</p> <p>8 engineering from the University of Virginia. I</p> <p>9 have a master's degree in engineering science from</p> <p>10 the University of New South Wales, a law degree</p> <p>11 from Wayne State, and a graduate certificate in</p> <p>12 dispute resolution from Wayne State.</p> <p>13 Q. When did you first start practicing as an</p> <p>14 attorney?</p> <p>15 A. I was admitted to the bar in February or March of</p> <p>16 1984.</p> <p>17 Q. And who --</p> <p>18 A. It would have been a little later than that. It</p> <p>19 would have been May of '84. Bar exam was in</p> <p>20 February.</p> <p>21 Q. I understand you work at Bodman?</p> <p>22 A. I've worked at Bodman my entire career.</p> <p>23 Q. Okay. And what area are you in?</p> <p>24 A. I practice in two practice groups,</p> <p>25 environmental -- the environmental practice group</p>
<p style="text-align: right;">Page 6</p> <p>1 Clinton Township, Michigan</p> <p>2 Monday, July 14, 2014</p> <p>3 8:10 a.m.</p> <p>4 (Mr. Ruegger not present at 8:10</p> <p>5 a.m.)</p> <p>6 R. CRAIG HUPP,</p> <p>7 was thereupon called as a witness herein, and</p> <p>8 after having first been duly sworn to testify to</p> <p>9 the truth, the whole truth and nothing but the</p> <p>10 truth, was examined and testified as follows:</p> <p>11 MR. WATSON: Let the record reflect</p> <p>12 that this will be a deposition taken pursuant to</p> <p>13 Notice, to be used for all purposes appropriate</p> <p>14 under the applicable rules.</p> <p>15 EXAMINATION</p> <p>16 BY MR. WATSON:</p> <p>17 Q. Mr. Hupp, I'm going to ask you a series of</p> <p>18 questions. If you don't understand the question,</p> <p>19 you want me to rephrase it or anything of that</p> <p>20 nature, please let me know and I'll try to</p> <p>21 accommodate you. Otherwise, I will assume that</p> <p>22 you've heard the question and are responding to</p> <p>23 it. Okay?</p> <p>24 A. Yes.</p> <p>25 Q. Have you ever been deposed before?</p>	<p style="text-align: right;">Page 8</p> <p>1 and the litigation practice group.</p> <p>2 Q. What are your main focuses in the environmental</p> <p>3 practice group? What do you do?</p> <p>4 A. There's three general activities. There's general</p> <p>5 counseling of corporate clients mostly on almost</p> <p>6 any possible question under environmental law. I</p> <p>7 do a lot of work with banks when environmental</p> <p>8 issues arise in loan agreements or workouts or</p> <p>9 foreclosures, and do a certain amount -- not much</p> <p>10 lately of environmental litigation, typically</p> <p>11 over -- under the various statutes and hazardous</p> <p>12 waste laws, cost recovery, and the like.</p> <p>13 Q. In this matter, you know there are a couple loan</p> <p>14 agreements at issue, the settlement agreement and</p> <p>15 an acquisition agreement. You have experience in</p> <p>16 drafting such agreements?</p> <p>17 A. I have experience in drafting parts of such</p> <p>18 agreements, but not agreements as a whole.</p> <p>19 Q. How long have you done work for Macomb County?</p> <p>20 A. My first assignment for Macomb County was probably</p> <p>21 1998 or 1999.</p> <p>22 Q. And have you worked continuously for them since</p> <p>23 then?</p> <p>24 A. Yes.</p> <p>25 Q. What are the types of legal work you've done for</p>

<p style="text-align: right;">Page 9</p> <p>1 Macomb County?</p> <p>2 <b>A. Our firm has represented the Office of Public</b></p> <p>3 <b>Works since 1977 on matters related to DWSD rates</b></p> <p>4 <b>and the county's contract for wastewater services.</b></p> <p>5 <b>That continues through today. I have handled --</b></p> <p>6 <b>provided environmental advice on a bunch of</b></p> <p>7 <b>environmental issues as they have arisen for the</b></p> <p>8 <b>department, wetlands, soil sedimentation issues.</b></p> <p>9 <b>With others I've been involved in several lawsuits</b></p> <p>10 <b>involving construction claims, at least one</b></p> <p>11 <b>lawsuit to recover environmental cleanup costs,</b></p> <p>12 <b>you know. There have certainly been other matters</b></p> <p>13 <b>but that kind of gives you a general picture, I</b></p> <p>14 <b>hope.</b></p> <p>15 <b>Q. Have you been involved in representing Macomb</b></p> <p>16 <b>County in what we've referred to in this</b></p> <p>17 <b>litigation as the Feikens case?</b></p> <p>18 <b>A. Yes.</b></p> <p>19 <b>Q. What types of things have you done in that</b></p> <p>20 <b>Feikens case?</b></p> <p>21 <b>A. First and foremost the Feikens case was filed in</b></p> <p>22 <b>1977. And that became the litigation or the place</b></p> <p>23 <b>or the forum -- forum, I guess, where disputes</b></p> <p>24 <b>over rates and charges from Detroit mostly got</b></p> <p>25 <b>played out. That's something that arose as soon</b></p>	<p style="text-align: right;">Page 11</p> <p>1 <b>At one point there was various ancillary disputes</b></p> <p>2 <b>that would arise in the case. It just -- and then</b></p> <p>3 <b>ultimately at the time of Judge Feikens's</b></p> <p>4 <b>retirement and the transfer to Judge Cox, the</b></p> <p>5 <b>larger question of restructuring DWSD governance</b></p> <p>6 <b>and getting DWSD separated from Detroit, which was</b></p> <p>7 <b>a process that counties weren't very much involved</b></p> <p>8 <b>with continued, and sort of the regional authority</b></p> <p>9 <b>negotiations that have gone over the last year</b></p> <p>10 <b>have been a part of that continuum. So there's</b></p> <p>11 <b>been this -- over the 35 plus years, there's been</b></p> <p>12 <b>a very broad type of activities that occurred in</b></p> <p>13 <b>that case.</b></p> <p>14 <b>Q. Now, one thing I think I heard you say is that</b></p> <p>15 <b>after a point it became pretty clear that if an</b></p> <p>16 <b>entity like Macomb had a dispute with DWSD, that</b></p> <p>17 <b>would be heard in federal court before Judge</b></p> <p>18 <b>Feikens?</b></p> <p>19 <b>A. Yeah. That wasn't universally true. If it</b></p> <p>20 <b>involved rates and charges or the management of</b></p> <p>21 <b>DWSD, that was certainly the case. That was the</b></p> <p>22 <b>case up until Judge Feikens's retired. There were</b></p> <p>23 <b>other cases -- Macomb County had a dispute with</b></p> <p>24 <b>Detroit over some potential damage to a Macomb</b></p> <p>25 <b>County facility, and that case proceeded in state</b></p>
<p style="text-align: right;">Page 10</p> <p>1 <b>as the 1977 case was filed. And thereafter there</b></p> <p>2 <b>were occasions when one or more of the wholesale</b></p> <p>3 <b>customers challenged some aspect of the charges in</b></p> <p>4 <b>state court. Detroit removed it to federal court.</b></p> <p>5 <b>Judge Feikens made clear he believed those</b></p> <p>6 <b>disputes belonged in his court. He made that</b></p> <p>7 <b>point often enough by 1982 or 1983 that thereafter</b></p> <p>8 <b>nobody tried to go to state court, because they</b></p> <p>9 <b>were just going to end up in front of Judge</b></p> <p>10 <b>Feikens.</b></p> <p>11 <b>And so most -- until actually the</b></p> <p>12 <b>global settlement in 2008, most -- any significant</b></p> <p>13 <b>rate dispute wound up playing out in front of</b></p> <p>14 <b>Judge Feikens through contested motions or other</b></p> <p>15 <b>sorts of matters. In addition, often under the</b></p> <p>16 <b>court's oversight or whatever, in various periods</b></p> <p>17 <b>of history, the court became involved in</b></p> <p>18 <b>overseeing and attempting to rectify DWSD</b></p> <p>19 <b>management with the objective of having DWSD be</b></p> <p>20 <b>able to comply with the Clean Water Act; and that</b></p> <p>21 <b>would involve wholesale customer involvement in</b></p> <p>22 <b>the process in terms of consent decrease intended</b></p> <p>23 <b>to accomplish management reforms, disputes over</b></p> <p>24 <b>whether certain sorts of projects need to comply</b></p> <p>25 <b>with the law could go ahead over various reasons.</b></p>	<p style="text-align: right;">Page 12</p> <p>1 <b>court, for example. But if it involved rates and</b></p> <p>2 <b>charges or anything like that, one way or the</b></p> <p>3 <b>other, it would wind up in front of Judge Feikens.</b></p> <p>4 <b>Q. Are you familiar with a settlement agreement, I</b></p> <p>5 <b>think, that was actually dated May 2009 between</b></p> <p>6 <b>Macomb and Detroit and Oakland counties, perhaps</b></p> <p>7 <b>other entities?</b></p> <p>8 <b>A. I am.</b></p> <p>9 <b>Q. And what was your involvement in that settlement</b></p> <p>10 <b>agreement, if any?</b></p> <p>11 <b>A. I represented with others -- I'm sure there were</b></p> <p>12 <b>other lawyers at Bodman. I was the principal</b></p> <p>13 <b>lawyer involved. I represented Macomb County</b></p> <p>14 <b>Office of Public Works in a negotiation of that</b></p> <p>15 <b>settlement agreement and its documentation.</b></p> <p>16 <b>MR. WATSON: I'm going to get this one</b></p> <p>17 <b>marked. It's been marked before, but I didn't</b></p> <p>18 <b>bring the exhibits from the other dep. Maybe</b></p> <p>19 <b>we'll just mark that as Hupp Exhibit 1.</b></p> <p>20 <b>MARKED FOR IDENTIFICATION:</b></p> <p>21 <b>DEPOSITION EXHIBIT 1</b></p> <p>22 <b>8:20 a.m.</b></p> <p>23 <b>BY MR. WATSON:</b></p> <p>24 <b>Q. Mr. Hupp, you've been handed what's been marked</b></p> <p>25 <b>as Hupp Exhibit 1. Is that the settlement</b></p>

Page 13	Page 15
<p>1 agreement between City of Detroit, DWSD, Macomb 2 County, Oakland County, Wayne County? 3 <b>A. Yes. I'm not sure if it has all of the exhibits 4 attached to it, but the main body of this is 5 the -- this is the agreement, yes.</b> 6 Q. Were you involved in drafting this agreement? 7 <b>A. Yes.</b> 8 Q. Were you the principal drafter of the agreement, 9 or do you know who was the principal drafter was? 10 <b>A. My recollection is this was very much of a joint 11 effort by all of the attorneys for the various 12 parties were very actively involved in drafting 13 this.</b> 14 Q. Who else was involved? First let's say the 15 attorneys. 16 <b>A. For the City of Detroit, it would have been Mark 17 Jacobs, Bob Walters. For Oakland County, it would 18 have been Joe Colaianne, C-o-l-a-i-a-n-n-e, who 19 was in-house counsel for the Office of Water 20 Resources Commissioner, Oakland County. And 21 Jaye -- excuse me -- Jaye, J-a-y-e, Quadrozzi, 22 Q-u-a-d-r-o-z-z-i, outside counsel for Oakland 23 County. For Wayne County, it would have been 24 Patrick McCulloch and -- who was outside counsel, 25 and Lavonda Jackson who was assistant Wayne County</b></p>	<p>1 <b>Before that it was Anthony Adams, and before that 2 it was Victor Mercado or somebody -- I mean, 3 Mercado was gone by the time we were working on 4 this.</b> 5 Q. Do you know when Mercado left? Was it 2008? 6 2009? 7 <b>A. He left in the June of 2008.</b> 8 Q. June of 2008. I note that this settlement 9 agreement has a court caption on it. Were the 10 negotiations supervised by the court and 11 encouraged by the court? Why was the court 12 involved in this? 13 <b>A. Anything of this -- because it resolved disputes, 14 quite a number of them -- there's a list of them 15 in one of the attachments of all of the disputes. 16 This became known as the global settlement. And 17 there's a list in here somewhere. Exhibit C is a 18 list of all of the matters pending before Judge 19 Feikens that this global settlement resolved. So 20 there are a variety of motions and orders and 21 opinions, et cetera that were resolved. And, 22 again, as I mentioned before, his court had become 23 the forum for all disputes over rates and charges, 24 DWSD management and the like.</b> 25 <b>At some point -- in further answer to</b></p>
Page 14	Page 16
<p>1 corp counsel, and then on my side -- on the Macomb 2 County side of the table were myself. I don't 3 recall specifically who else within Bodman would 4 have looked at this. And then Mr. Misterovich 5 wearing his lawyer's hat for Macomb County. 6 Q. As far as the client representatives for Macomb 7 County and DWSD, can you identify those 8 individuals. 9 <b>A. From Macomb County, ultimately I reported to 10 Commissioner Marrocco. On a kind of a day 11 reporting basis, it was to Mr. Misterovich, his 12 chief deputy, and Mr. James Pistilli, who was the 13 -- I don't remember his title exactly, but he 14 effectively chief engineer for wastewater 15 services. I don't think that particular title had 16 been created at that point.</b> 17 Q. What about for DWSD? 18 <b>A. It would have inside DWSD Bob Walters and 19 occasionally other representatives of DWSD 20 management, but in this time period, there was a 21 shifting through maybe three or four 22 individuals -- or in this time period, Mr. Mercado 23 had left, and Ms. Pamela Turner was interim 24 director, so as of the fall -- as of the kind of 25 spring of 2009, it would have been Pamela Turner.</b></p>	<p>1 your question, at some point Judge Feikens 2 appointed Mr. Timothy O'Brien to serve as kind of 3 a facilitator, and Mr. O'Brien orchestrated the 4 discussions that generated a settlement in 5 December of 2008 that did not get formally entered 6 as a settlement agreement with the court until May 7 of 2009, but the agreement was reached in December 8 of 2008. 9 Q. I take it that this agreement was intended to 10 resolve all pending disputes between, among 11 others, DWSD and Macomb? 12 <b>A. No. That's not correct.</b> 13 Q. Were there disputes between the two that it 14 didn't resolve that you're aware of? 15 <b>A. Yes.</b> 16 Q. What were those? 17 <b>A. There were a variety of rate-related disputes. In 18 fact, that's why there is a specific 19 enumeration -- why the parties put together a 20 specific enumeration of what was getting resolved 21 was there were other things pending. I know I'd 22 have a hard time listing them right now, but 23 Macomb County had a variety of more mundane rate 24 disputes then pending, and I'd be virtually 25 certain Oakland County had some stuff -- excuse</b></p>

Page 17

Page 19

1 me, some concerns as well that were not addressed  
2 by this.  
3 Q. Well, let's look at exhibit -- you say Exhibit C  
4 was the list of matters resolved.  
5 A. Generally, yes.  
6 Q. And I'm looking down Exhibit C, and I see the  
7 name Infrastructure Management Group. Are you  
8 familiar with that entity? What is that?  
9 A. It is my understanding that the Infrastructure  
10 Management Group was a consulting firm of some  
11 sort retained by DWSD, I believe, at the urging of  
12 the court to oversee the DWSD contracting process.  
13 Q. As I understand it, it oversaw contracts over  
14 \$500,000. Do you recall that?  
15 A. I don't have that level of information personally  
16 about what their task was.  
17 Q. Did you ever have any dealings with them?  
18 A. No.  
19 Q. I'm looking at the next page, No. 5, interceptor  
20 collapse.  
21 A. Yes.  
22 Q. And it resolves apparently a motion for  
23 reconsideration. What was that about?  
24 A. In February of -- Macomb County had filed a  
25 proceeding in the 1977 case challenging its

1 project, and the debt service cost -- annual debt  
2 service cost to the project is then put in the  
3 rates to the class of customers served by the  
4 project. So in the case of an interceptor or any  
5 other facility that would serve only Macomb  
6 County, if DWSD borrowed money to construct a  
7 facility, the debt service associated with that  
8 project as tracked by DWSD's accounting system  
9 would be put in DWSD -- excuse me -- would be put  
10 in Macomb County's rates and nobody else's.  
11 And there was one and then it turned  
12 out two projects where, from Macomb County's point  
13 of view, the manner in which DWSD was calculating  
14 and attributing the debt service to Macomb County  
15 was incorrect and inconsistent with long-standing  
16 understandings and agreements as to how the  
17 capital cost would be recovered.  
18 Basically to make it simple, Detroit  
19 borrowed the money at 5%, and then charged -- they  
20 were charging Macomb County about 7 to 7-1/2%.  
21 Q. Had there been a formal agreement between Detroit  
22 and Macomb County pinning down the interest rate  
23 at 5% or whatever percent it was?  
24 A. I believe the answer to that is yes. I believe it  
25 was set forth in the rate setting protocols that

Page 18

Page 20

1 liability for the costs incurred by DWSD in  
2 repairing a sewer collapse that occurred in August  
3 of 2004. In February of 2007, sua sponte, without  
4 notice to the parties, Judge Feikens issued an  
5 order dismissing Macomb County's claims with  
6 prejudice. Macomb County moved for  
7 reconsideration of that order, apparently,  
8 according to this, on April 6, 2007.  
9 Q. And so this global settlement resolved that  
10 dispute in full?  
11 A. I think a fair answer was we thought so at the  
12 time. It's been clear since it didn't.  
13 Q. How so?  
14 A. Well, there's this matter that I'm being deposed  
15 in today and I know Macomb County has had two  
16 lawsuits pending over those costs that remain in  
17 court.  
18 Q. And then it says "Interceptor interest rate."  
19 What was the dispute about in regard to  
20 interceptor interest rate?  
21 A. Under Detroit's rate setting procedures, as far as  
22 I know, at least since mid-1970s, the cost of  
23 capital projects are recovered in the rates by --  
24 depending on the project, determining what  
25 customer classes are served by the capital

1 Detroit and its wholesale customers had developed  
2 and agreed to over the years.  
3 Q. Let me ask this because I'm not sure my  
4 understanding is correct. As I understood, there  
5 had been a formal agreement that had pretty much  
6 expired. Detroit and Macomb had not reached a  
7 new agreement. Detroit was charging the 7% or so  
8 that Macomb felt was too high. Is that how it  
9 happened?  
10 A. No.  
11 Q. How did it happen that Detroit charged the 7% or  
12 7-1/2%, whatever it was?  
13 A. I could never figure out what prompted Detroit to  
14 do that. It was clearly inconsistent with all  
15 practices.  
16 Q. Nevertheless, the matter was settled?  
17 A. The matter was settled.  
18 Q. Okay. Let's look at a few of the provisions of  
19 the acquisition agreement.  
20 MS. BADALAMENTI: Of Exhibit 1 or the  
21 acquisition agreement?  
22 MR. WATSON: I'm sorry, the settlement  
23 agreement. Thank you.  
24 THE WITNESS: If we could go off the  
25 record briefly.

Page 21

Page 23

1 (Off the record at 8:35 a.m.) eye  
2 (Back on the record at 8:35 a.m.)  
3 **BY MR. WATSON:**  
4 Q. Looking at -- on the second page, 1 A 4, it says?  
5 **A. I don't believe I have the document you're looking**  
6 **at. Is this the settlement agreement?**  
7 Q. Yeah, the settlement agreement?  
8 **A. What page?**  
9 Q. Second page, 1-A(iv).  
10 **A. Okay.**  
11 Q. It reads "All disputes and claims between the  
12 parties related to costs for repairs and  
13 renovation of the interceptor sewers listed in  
14 Exhibit 1 of Exhibit D of this agreement." And I  
15 was wondering if the interceptor -- 15 Mile Road  
16 interceptor collapsed -- interceptor that  
17 collapsed was one of those.  
18 **MS. BADALAMENTI:** I'm going to object.  
19 There isn't an Exhibit 1 to Exhibit D, and there  
20 hasn't been a version of this document that we've  
21 seen. But you can go ahead.  
22 **MR. WATSON:** I might not have brought  
23 it. And you don't remember offhand if -- let's  
24 see here. Let's have that marked Exhibit 2.  
25 **MARKED FOR IDENTIFICATION:**

1 Q. Do you understand the question at all?  
2 **MS. BADALAMENTI:** Let me do it this  
3 way: I'm going to place a continuing objection to  
4 any question that suggests that Exhibit 1 was  
5 attached as Exhibit D for the settlement agreement  
6 that we've marked here as Exhibit 1. But subject  
7 to that objection, you can go ahead and answer.  
8 **BY MR. WATSON:**  
9 Q. So I guess the first task I have assigned to you  
10 is if you could confirm that Exhibit D of the  
11 settlement agreement is the same as the  
12 Exhibit 2, Letter of Intent.  
13 **A. Obviously without reviewing them word for word, I**  
14 **can't say whether they're identical or not. They**  
15 **appear to be the same. They have the same**  
16 **document number on the first lower right corner of**  
17 **the first page. So, again, they appear to be the**  
18 **same, but I have not done a literal word-for-word**  
19 **comparison.**  
20 Q. If you could look at Exhibit 2, which at the top  
21 says "Letter of Intent," correct?  
22 **A. Yes.**  
23 Q. And if you would look at Exhibit 1 to Exhibit 2,  
24 Exhibit 1 reads "Oakland-Macomb Interceptor  
25 System Property to Be Transferred." What I'm

Page 22

Page 24

1 DEPOSITION EXHIBIT 2  
2 8:37 a.m.  
3 **BY MR. WATSON:**  
4 Q. You've been handed, Mr. Hupp, what's been marked  
5 Exhibit 2. And my understanding is that that's  
6 the same Letter of Intent that's attached to this  
7 settlement agreement, but that happens to have  
8 the Exhibit 1 to Exhibit D. If you could take a  
9 look at Exhibit 1 to Exhibit D.  
10 **MS. BADALAMENTI:** You want him to look  
11 at Exhibit 1 of your marked Exhibit 2?  
12 **MR. WATSON:** Right.  
13 **MS. BADALAMENTI:** Because there is no  
14 Exhibit 1 to Exhibit D on Exhibit 1, right?  
15 **MR. WATSON:** Well, Exhibit D, I think,  
16 is Exhibit 2 -- Deposition Exhibit 2.  
17 **BY MR. WATSON:**  
18 Q. If you could confirm that those two documents are  
19 the same. And then look -- as far as Exhibit 2,  
20 look at Exhibit 1 to Exhibit 2, and my question  
21 is whether or not the sewer that collapsed is  
22 listed amongst those.  
23 **MS. BADALAMENTI:** That was a lot of  
24 questions, but --  
25 **BY MR. WATSON:**

1 trying to figure out is the sewer that collapsed,  
2 is that amongst the properties listed in this  
3 Exhibit 1?  
4 **A. Yes, it is.**  
5 Q. Okay. If you would go back to the settlement  
6 agreement, Hupp Deposition Exhibit 1, I'm looking  
7 at what's marked at the bottom as 3 of the  
8 settlement agreement. It's actually page 4 as  
9 I'm counting, but it says 3 at the bottom.  
10 **A. Yes.**  
11 Q. And section B reads in part "The parties, in  
12 complete satisfaction of the 2004 collapse  
13 claims," and then it goes on, and it talks about  
14 an amount of \$17,050,000. What was the  
15 \$17,050,000 for? Do you know?  
16 **A. It's as stated in that sentence, Macomb had**  
17 **asserted a challenge to the liability for the 2004**  
18 **collapse. I forget what the dispute over the 2006**  
19 **repairs were. And they had challenged the manner**  
20 **in which Detroit was calculating interest rate on**  
21 **the 2004 collapse cost as well as on another**  
22 **interceptor project, so they had asserted a**  
23 **variety of claims stating they were being either**  
24 **overcharged or charged for things that they**  
25 **shouldn't be liable for, and ultimately all those**

<p style="text-align: right;">Page 25</p> <p>1 claims were -- resulted in a judgment in Macomb 2 County's favor of \$17,050,000. 3 Q. And I guess the logical question becomes: An 4 adjustment to what? 5 A. As collectively the documents indicate, as part of 6 settling these and other claims that Oakland and 7 Macomb County had, with some ancillary adjustments 8 to Wayne County as well, these claims and Oakland 9 County's claims would get settled, and in 10 consideration for that, Oakland County and Macomb 11 County would take over the interceptor system 12 north of 8 Mile Road, and they would reimburse 13 Detroit for the outstanding debt being charged in 14 the rates for those assets being transferred to 15 the two counties or an entity to be created by 16 those counties. 17 Q. Okay. So as I understand, the basic agreement 18 the parties were working on, if we just focus on 19 Macomb County, is that Macomb County would 20 purchase the Macomb Interceptor system by paying 21 Detroit the amount of debt on the system? 22 A. The transaction to begin with, as reflected in the 23 settlement agreement, was really more of a unitary 24 transaction in the sense that I don't believe 25 until December of 2008, when this agreement really</p>	<p style="text-align: right;">Page 27</p> <p>1 answer to the extent it does not do so. 2 <b>THE WITNESS:</b> Thank you. What I think 3 is important to recognize is that this document 4 entered in court in May of -- May 18, 2009, these 5 documents were done in the form you see them 6 essentially in December of 2008. The delay 7 between reaching the settlement as reflected in 8 these documents and entry with the court was 9 because in that time period, there was a question 10 as to whether the other parties in the 1977 case 11 required notice or not, because this was a 12 settlement agreement in the 1977 case, and in the 13 1977 case, all of DWSD's wholesale customers, of 14 whom there are 17 are parties. So between 15 December and May, there was initial conference 16 with the court about what's the procedure for 17 entering this settlement agreement, and 18 ultimately, if memory serves me, there was -- I 19 don't know whether there was a notice and show 20 cause or just a general notice of the parties that 21 they could file objections. So even though this 22 is a May settlement agreement, these documents 23 represent the parties' thinking in December. 24 What I can tell you, by May, by the 25 time this went to court, the decision had been</p>
<p style="text-align: right;">Page 26</p> <p>1 was done, that Oakland and Macomb County had 2 decided how the assets being transferred would be 3 owned. I think that at that time the possibility 4 had not been eliminated that the counties would 5 put together just one entity to own all of the 6 assets, which could have been done. There were 7 plenty of state statutes that could have been done 8 that way. And it was at some time after the 9 settlement in December of 2008 that Wayne and 10 Oakland County decided they will own a joint 11 entity called the Oakland-Macomb Interceptor Drain 12 Drainage District, and these assets would be 13 transferred to a Macomb Interceptor Drain Drainage 14 District. 15 Q. What about the time of the settlement agreement? 16 Was it still under consideration to go to this 17 one -- I think you said unitary system -- or had 18 it been decided at this time, by May 2009, that 19 there would be is sort of two systems -- I call 20 it the OMI system -- and the Macomb system? 21 <b>MS. BADALAMENTI:</b> I'm going to object 22 to the extent that the question calls for him to 23 divulge privileged information. It's my 24 understanding neither county has waived their 25 privilege. Certainly Macomb has not. You can</p>	<p style="text-align: right;">Page 28</p> <p>1 made to have two entities, and steps were underway 2 to create the OMI. 3 <b>BY MR. WATSON:</b> 4 Q. Okay. Are you aware when the initial 5 negotiations started for the purchase by Macomb 6 or maybe a joint entity of the Macomb Interceptor 7 system? When did that -- when did that -- those 8 negotiations first start? And this sort of 9 documents that the parties intended something 10 like that to be done. Do you recall when those 11 negotiations first started taking place? 12 A. There was an attempt at settlement in the 13 2006-2007 time frame to which Macomb was the only 14 customer -- wholesale customer party. 15 Q. Was there -- 16 A. That settlement came to naught when Judge Feikens 17 dismissed Macomb County's claims; thereafter no 18 settlement was possible, because the judge had 19 said Macomb County is out of court. It was about 20 probably sometime -- so that's the spring of 2007. 21 I think sometime in the spring of 2008 Judge 22 Feikens appoints Tim O'Brien as a facilitator to 23 attempt to get matters resolved. Macomb County's 24 motion for rehearing was still pending a year 25 later. And obviously Macomb still had all sorts</p>



Page 29

1 of rights of appeal.  
 2 Shortly after Mr. O'Brien -- it's my  
 3 recollection shortly after Mr. O'Brien's  
 4 introduction into the discussions, he raised the  
 5 possibility that settlement might go better if  
 6 Macomb -- if Oakland County were involved, and  
 7 there was an attempt to accomplish a global  
 8 settlement of all of the things that are listed on  
 9 Exhibit C to the settlement agreement. In fact,  
 10 history proved that Mr. O'Brien had found a  
 11 correct formulation, because once the discussion  
 12 was broadened to cover all of these disputes, the  
 13 parties were able to work forward to a resolution.  
 14 And once Oakland County became part of the mix,  
 15 then the question was, well, if Macomb is going to  
 16 take this set of interceptors, but Oakland and  
 17 Macomb share these other interceptors here, why  
 18 don't you, the two counties, take all of them.  
 19 And the counties agreed to do that, and sometime  
 20 later figured out who would -- you know, what  
 21 entities would then manage them.  
 22 But that's basically the genesis of the  
 23 settlement that came to be. We started with  
 24 Mr. O'Brien, and -- sometime in the spring of  
 25 2008, and by December had gotten to what the

Page 30

1 settlement agreement says.  
 2 Q. Now, I was told by someone that early on there  
 3 had been, like in 2006 or 2007, some type of  
 4 handshake agreement between Mr. Marrocco and  
 5 Mr. Mercado that Macomb would purchase the system  
 6 by assuming the debt on the system. Were you  
 7 aware of anything like that?  
 8 A. Yes.  
 9 MS. BADALAMENTI: I'm going to object  
 10 to that question to the extent that it calls for  
 11 him to divulge privileged information of the  
 12 county.  
 13 BY MR. WATSON:  
 14 Q. Were you around for any type handshake agreement  
 15 like that? Did you witness that?  
 16 A. I was aware of it. I didn't witness it.  
 17 Q. Any idea of when that might have occurred?  
 18 A. Late summer/early fall of 2006.  
 19 Q. But apparently that was pretty much scuttled by  
 20 the Feikens decision. And then things got  
 21 resurrected, you were saying, spring 2008 or so,  
 22 and then that led to what eventually became the  
 23 deal?  
 24 A. Yes. Well, whatever had been understood to exist,  
 25 you know, went out the window with Judge Feikens'

Page 31

1 decision. Furthermore, by that time there were  
 2 other disputes going hot and heavy like the  
 3 interest rate dispute, which any prior  
 4 understanding of the -- what to do about the 2004  
 5 collapse didn't include. So when things get  
 6 restarted, the effort was let's get everything  
 7 settled. And meanwhile, something we haven't  
 8 touched on, the 800 megahertz radio dispute that's  
 9 mentioned on Exhibit 2 to the settlement  
 10 agreement, that, again, was a dispute by the  
 11 wholesale customers that involved 30 to  
 12 \$50 million, and was obviously a huge issue as  
 13 well.  
 14 So there was essentially a fresh start  
 15 after February of 2007.  
 16 Q. Okay. O'Brien gets in, there are new  
 17 negotiations, and eventually resulted in this  
 18 settlement agreement which you say was reached  
 19 primarily by December of '08, but documented or  
 20 signed here in May of 2009?  
 21 A. It was entered with the court in May of 2009.  
 22 Q. Okay.  
 23 A. But the court was informed in December of 2008  
 24 that a settlement had been reached, and I believe  
 25 the drafts of all of these documents which are --

Page 32

1 were essentially identical to these documents were  
 2 provided -- were certainly done by the parties,  
 3 and I think they were provided to the court as a  
 4 matter of information in December of 2008.  
 5 Q. And turn to page 6 of the agreement. 6-B  
 6 contains an integration clause. Were you  
 7 involved in drafting that clause and assisting it  
 8 be placed in this agreement?  
 9 A. I have no recollection who specifically wrote this  
 10 clause or where it came from. It was certainly  
 11 reviewed by all of the attorneys that looked at  
 12 this, and --  
 13 Q. Okay. And going to the next page, I see it's --  
 14 there is a signature of Pam Turner. Do you see  
 15 that?  
 16 A. Yes.  
 17 Q. Was she involved in the negotiations at all?  
 18 A. I don't recall. It would have been -- I'm just  
 19 trying to remember dates. Victor Mercado left in  
 20 June. Anthony Adams was appointed as either  
 21 director or interim director. He served until  
 22 sometime in the fall. And then between that point  
 23 and December, I think -- I think by December --  
 24 I'm not sure. Ms. Turner might have been interim  
 25 director by December. I think she probably was.

Page 33

Page 35

1 I don't remember meetings with her where  
2 substantive matters were negotiated or discussed.  
3 Q. In negotiating the agreement, is it accurate to  
4 say that the primary negotiators were the  
5 attorneys for the parties?  
6 A. That was my impression of -- only partially  
7 correct. I would say on the DWSD side Mark Jacobs  
8 and Bob Walters were very active. For this  
9 agreement, Bart Foster was not -- was involved  
10 when it came to negotiating dollars. On the  
11 county side there was really kind of -- my  
12 impression, was a team of people where the lawyers  
13 were working very closely with either their  
14 principal client, the commissioner, or their  
15 senior engineering people. Certainly the  
16 legalese, you know, ultimately was a matter for  
17 the lawyers involved, but the overall agreements  
18 were the product of very active involvement by, on  
19 the county side, all of the counties.  
20 Q. So Misterovich and Marrocco were actively  
21 involved for Macomb County?  
22 A. My regular contact was Mr. Misterovich. I  
23 certainly met with Commissioner Marrocco when  
24 there were big decisions to be made. And then  
25 there were, I'd say, their engineering staff at

1 purpose is plain from reading it. It was an  
2 attempt to state the terms of the deal in more  
3 detail than what the consent judgment --  
4 settlement agreement itself said. So I think the  
5 idea was the settlement agreement will cover all  
6 of the matters that are being settled, and it will  
7 have attachments to it to lay out some of the  
8 details, like what are the facilities and so on.  
9 Q. In this case we filed -- both sides filed witness  
10 lists, and both sides listed on their witness  
11 list, I believe, 30(b)(6) witnesses, and we  
12 listed two for 30(b)(6), the Macomb County  
13 witness or attorney most knowledgeable about the  
14 allegations of the Complaint filed by Macomb in  
15 Macomb Circuit Court, but what might be  
16 applicable here, the Macomb County corporate  
17 representative who could talk about the  
18 acquisition agreement. Do you know -- have you  
19 been designated as Macomb's 30(b)(6) witness who  
20 can talk about the acquisition agreement?  
21 A. I don't know.  
22 MR. WATSON: Raechel, is Craig the guy  
23 for that?  
24 MS. BADALAMENTI: I think the response  
25 to those 30(b)(6) notices were objections by

Page 34

Page 36

1 Macomb and the other counties that had detailed  
2 knowledge of the systems themselves that was  
3 important in this whole process.  
4 Q. Was there any discussion during the negotiations  
5 that you can recall in regard to the  
6 reasonableness of the cost of the repairs paid by  
7 DWSD to cover the sewer collapse? Was that part  
8 of any negotiations you were in?  
9 A. I believe that -- I'm not sure -- that the  
10 Complaint we filed with Feikens certainly  
11 challenged Macomb's liability for the costs of the  
12 collapse. I don't recall whether there were  
13 specific allegations that, even if they were  
14 liable, the project cost too much. That certainly  
15 was a concern that at various times was expressed  
16 to DWSD as the discussions proceed.  
17 Q. Who expressed that?  
18 A. I couldn't tell you today.  
19 Q. Why was the Letter of Intent attached?  
20 Let me strike that and ask you: What  
21 was the purpose of this Letter of Intent, if you  
22 know?  
23 A. It was to -- I believe it was not prepared at  
24 Macomb's request, to my recollection. Someone  
25 thought there should be one. And I think its

1 myself and Mr. Brilliant. They're overbroad and  
2 outside and exceed the scope of what the court has  
3 permitted as limited discovery for purposes of  
4 this proceeding and evaluation of Macomb's claim  
5 at this time. Subject to those objections, our  
6 indication was that Mr. Misterovich and Mr. Hupp  
7 would be able to answer the questions that you  
8 might have, but you will recall that they were  
9 offered as witnesses prior to that 30(b)(6)  
10 notice.  
11 BY MR. WATSON:  
12 Q. Regardless of that, I'm going to ask you a few  
13 questions about the acquisition agreement.  
14 A. Sure.  
15 MARKED FOR IDENTIFICATION:  
16 DEPOSITION EXHIBIT 3  
17 9:04 a.m.  
18 BY MR. WATSON:  
19 Q. All right. I have it in front of me --  
20 MS. BADALAMENTI: Can I ask, because  
21 are you suggesting -- a lot of these documents  
22 have gone back and forth in the course of  
23 questioning. Are you going to ask him if this is  
24 the entire document including all the schedules or  
25 are you suggesting it is?

Page 37

Page 39

1 **MR. WATSON:** No, I'm not suggesting it  
 2 is. My understanding is when that document was  
 3 executed, there were -- I don't know -- hundreds  
 4 of pages of documents that accompanied it. I  
 5 think that copy he's got might have a few of the  
 6 exhibits attached to it, but certainly not all the  
 7 documents that were reviewed on the same date it  
 8 was signed or at the closing when it was signed.  
 9 **MS. BADALAMENTI:** Okay.  
 10 **BY MR. WATSON:**  
 11 Q. Are you familiar with the document, Mr. Hupp?  
 12 A. Yes.  
 13 Q. And it says "Macomb Acquisition Agreement" near  
 14 the top, does it not?  
 15 A. Yes.  
 16 Q. Did you play any role in drafting that document?  
 17 A. **I assisted in drafting this document.**  
 18 Q. Who else drafted it?  
 19 A. **This was a combined effort of a number of**  
 20 **attorneys, Mark Jacobs -- Bob Walters actually did**  
 21 **the first draft, I think. Mark Jacobs and I wound**  
 22 **up being the -- this document went from the Dykema**  
 23 **word-processing system to the Bodman**  
 24 **word-processing system, back to Bodman. But in**  
 25 **addition, certainly lawyer representatives of the**

1 **deputy director at this time period, but certainly**  
 2 **in the first go around on this document for the**  
 3 **OMI transaction, I have no recollection of**  
 4 **Mr. Latimer being involved.**  
 5 Q. Did you recommend that Misterovich go ahead or  
 6 Macomb County enter into this agreement?  
 7 A. **I recommended that this agreement appeared to**  
 8 **comport with what Macomb County was seeking to**  
 9 **accomplish in the deal, and that it reflected the**  
 10 **terms and concerns of the client, so I recommended**  
 11 **the document. The client itself obviously had**  
 12 **made the decision about whether to do the deal or**  
 13 **not.**  
 14 Q. As I understand, the broad parameters of the  
 15 agreement was that basically Macomb would assume  
 16 the debt on the system as a purchase price and  
 17 there would be certain amounts deducted from that  
 18 system debt.  
 19 A. **The correct characterization is that Macomb County**  
 20 **would pay to DWSD the amount of outstanding debt**  
 21 **on the capital projects that were being**  
 22 **transferred. It was not assuming any debt.**  
 23 Q. Okay. Thank you. And as I understand the debt  
 24 on the system, at one time it was something like  
 25 \$116 million? Do you recall what the debt was on

Page 38

Page 40

1 **clients were involved and commented, added and**  
 2 **subtracted to it as the document went along.**  
 3 **(Mr. Ruegger present at 9:07**  
 4 **a.m.)**  
 5 **BY MR. WATSON:**  
 6 Q. I'm looking at 25 of 25.  
 7 A. Yes.  
 8 Q. And I see the signatures on the document appear  
 9 to be William Misterovich and Darryl Latimer.  
 10 Are you familiar with those two gentlemen?  
 11 A. **I know Mr. Misterovich.**  
 12 Q. What about Latimer?  
 13 A. **I know Mr. Misterovich. I know Mr. Latimer.**  
 14 Q. How involved was Mr. Latimer in negotiating this?  
 15 A. **I have no recollection of Mr. Latimer's**  
 16 **involvement, keeping in mind that this document --**  
 17 **97 percent of this document was negotiated as part**  
 18 **of the first OMI transaction, and it was the**  
 19 **understanding of the parties at the time that was**  
 20 **done that the document would then be the basic**  
 21 **model for the Macomb transaction as well, but**  
 22 **mostly a change of name and change of list of**  
 23 **assets. So in the time period that the work --**  
 24 **most of the work was done on this document, I**  
 25 **don't think Mr. Latimer was -- he might have been**

1 that system?  
 2 A. **That's obviously a question of at what point in**  
 3 **time.**  
 4 Q. Okay.  
 5 A. **At what point in time are you asking about the 116**  
 6 **million?**  
 7 Q. Do you recall when it was 116 million, the point  
 8 of time it was at that amount?  
 9 A. **I don't remember 116 million one way or the other,**  
 10 **but keep in mind, capital projects got done and**  
 11 **debt went up. Capital projects got paid off and**  
 12 **the debt went down. So that number moved all over**  
 13 **the place.**  
 14 Q. Okay.  
 15 **MARKED FOR IDENTIFICATION:**  
 16 **DEPOSITION EXHIBIT 4**  
 17 **9:11 a.m.**  
 18 **THE WITNESS:** All right. I have the  
 19 exhibit in front of me.  
 20 **BY MR. WATSON:**  
 21 Q. You've been handed what's marked Exhibit 4,  
 22 Mr. Hupp. Can you tell us what that is.  
 23 A. **That's Schedule 3.8 to the Macomb Acquisition**  
 24 **Agreement. It's titled Computation of Purchase**  
 25 **Price as of June 30, 2010, and sets out the agreed**

Page 41

1 upon debt for the assets being transferred that  
 2 had debt associated with them, plus a summary of a  
 3 variety of adjustments to that debt to reach an  
 4 adjusted final price as of June 30, 2010.  
 5 Q. Okay. In regard to adjustments, I see about  
 6 three-fourths of the way down, maybe a little  
 7 more, the global settlement says \$17,050,000.  
 8 That was the biggest adjustment, was it not?  
 9 A. The reason I can't answer that question the way  
 10 you ask it is there were a variety of adjustments  
 11 of these various projects in order to get to this  
 12 table. I'll make up a number. DWSD might have  
 13 said we think the debt on PCI 45 is \$30 million,  
 14 and after they were pressed for better records or  
 15 whatever, they might have said it turns out the  
 16 number is really \$20 million. So there's a bunch  
 17 of adjustments in the debt that don't appear here.  
 18 As reflected in adjustments specifically showing  
 19 on this page, the global settlement is the  
 20 largest -- is probably the largest adjustment.  
 21 Q. I'm looking at two lines under that \$17,050,000,  
 22 the \$870,252.  
 23 A. Yes.  
 24 Q. And it says "Balance of OMI/Macomb Miscellaneous  
 25 Rate Settlement." Do you see that?

Page 42

1 A. I do.  
 2 Q. Do you recall what that was about?  
 3 A. Yes.  
 4 Q. What was it?  
 5 A. That is a catchall. There were -- again, moving  
 6 back to recognizing that the OMI deal and the  
 7 Macomb deal were part and parcel of what started  
 8 out as a global joint settlement, and in working  
 9 through an equivalent schedule in the OMI deal,  
 10 which closed roughly 10 months before this, there  
 11 were a variety of rate disputes, and there was a  
 12 dispute over some meter charges that Detroit said  
 13 should be part of the rates, and -- part of the  
 14 price, and Oakland-Macomb said no, they shouldn't.  
 15 And at the end of the day, that dispute went up to  
 16 the week of the closing, if not the day before the  
 17 closing on the OMI deal. It was under a very  
 18 tight time schedule. And at the end, to resolve  
 19 all of those things, DWSD made a proposal that  
 20 here's all of these objections, they pertain to a  
 21 block of meters, some of which are going to  
 22 Macomb, some of which are going to go to OMI.  
 23 There's a number of these other rate disputes, so  
 24 I'll tell you what, why don't we just give you  
 25 another \$3 million credit on the price. That was

Page 43

1 accepted, and then that -- at that point in time  
 2 the outstanding debt on the OMI assets was roughly  
 3 \$2.2 million. The OMI system didn't have any  
 4 cash. So if we took 2.2 of the 3 million and  
 5 applied it to the OMI deal, the OMI deal could  
 6 close without paying any cash. So 2.2 of 3.0 was  
 7 attributed to the OMI deal, and the balance was  
 8 set aside and it was applied here.  
 9 Q. The 870,252?  
 10 A. Right. That's what's left of a \$3 million  
 11 settlement. The other thing I will note, so it's  
 12 clear -- and I don't know whether it applies to  
 13 this Schedule 3.8 or the 3.8 on the OMI deal, but  
 14 there was a revised schedule issued six months  
 15 after one of the two closings that had a  
 16 subsequent adjustment that affected this credit,  
 17 and I don't -- and so for that reason I can't  
 18 testify today that this Schedule 3.8 is the actual  
 19 "final" final schedule or not. The final  
 20 adjustment moved about -- I don't know -- 100, 200  
 21 grand, so it wasn't a material amount. So for the  
 22 record I want that clear.  
 23 Q. Is it fair to say that the parties did extensive  
 24 negotiation back and forth before arriving at the  
 25 adjusted final price of 89,996,704?

Page 44

1 A. Partly negotiation, partly just verification of  
 2 Detroit's debt figures.  
 3 Q. As I understand, prior to signing the acquisition  
 4 agreement, Macomb was entitled to secure  
 5 documents, whatever documents it wanted from  
 6 Detroit in regard to the system, ask whatever  
 7 questions it wanted, inspect portions of the  
 8 system if it desired to do so. Is that accurate?  
 9 Could Macomb have done all those things if it  
 10 wanted to?  
 11 A. Only partially.  
 12 Q. What part's not accurate?  
 13 A. The part is that Detroit -- DWSD's financial  
 14 system for much of this stuff was and to a certain  
 15 extent even today is in significant disorder.  
 16 From what I know about DWSD's financial system  
 17 from dealing with it as Macomb's attorney for a  
 18 long time, I don't think Macomb County would have  
 19 been able to independently audit at least these  
 20 debt prices. Bart Foster, their expert who's done  
 21 their rate work for 30 years -- Bart couldn't do  
 22 it. It took a year to just get these numbers on  
 23 3. It took more than a year. I doubt Macomb  
 24 County would ever have been able to get into those  
 25 numbers and figure them out.

<p style="text-align: right;">Page 45</p> <p>1 Q. Did Macomb ask to look at any DWSD documents? Do 2 you know? 3 A. We did not. Well, I mean, in what context? 4 Q. Well, in -- 5 A. There had been discovery in the lawsuits obviously 6 seeking cost documents focused on -- focused on 7 the collapse. We had certainly acquired documents 8 over time related to the interceptor collapse. As 9 part of verifying the debt numbers, we certainly 10 had asked for a certain amount of backup 11 documentation. So we certainly had asked for 12 some. In some cases we got what we asked for and 13 some cases the answer was we haven't got it or we 14 can't give it to you or whatever; we never got a 15 response. 16 Q. Did you ever ask for anything that DWSD had that 17 they didn't turn over to you or give you a copy 18 of? 19 A. I couldn't answer that question today given the 20 long tortured history of these negotiations and so 21 on and so forth. I have a suspicion if I went 22 back and looked at discovery requests, I'd say, 23 you know, I don't think they really gave us 24 everything we asked for, which is typical of 25 everybody when they look at discovery requests.</p>	<p style="text-align: right;">Page 47</p> <p>1 customers were liable. The conclusion was that 2 there was no way to figure out exactly how much of 3 that contract was spent on MC-S-1 as opposed to 4 other work that could be charged. Ultimately 5 after discussion with people on both sides, a 6 guesstimate was prepared that, well, I don't know, 7 that repair probably cost something in the order 8 of \$400,000, but -- and I only offer that to you 9 as a very specific example shown on this schedule. 10 We had that kind of discussion with a variety of 11 these projects. This table represents -- I don't 12 know -- a hundred hours -- couple hundred hours of 13 trying to get to the bottom of -- even if DWSD 14 could figure out whether they built certain 15 projects or not, because they call projects by 16 different names. So, no, I never was -- nobody at 17 Oakland and Macomb were ever fully satisfied that 18 these numbers were exactly right in their complete 19 totality. It was very frustrating. 20 Q. There were a lot of compromise on a lot of 21 different issues, it sounds like. 22 A. There certainly was to get to a number. 23 Q. Did you get the feeling that DWSD, the folks you 24 were dealing with there, were trying to take 25 unfair advantage or cheat Oakland or Macomb</p>
<p style="text-align: right;">Page 46</p> <p>1 Q. Did Macomb inspect the system at all before it 2 purchased it? 3 A. I don't know. 4 Q. Was it entitled to if it wanted to? 5 A. Yes. 6 Q. Did you have any questions of DWSD or anyone at 7 Macomb have questions of DWSD that were asked but 8 were not answered before the purchase? 9 A. I would say in trying to get to the bottom of the 10 debt, which was the piece that I mostly dealt 11 with, the answer is I did not get satisfactory 12 answers to many things, and ultimately had to 13 reach the conclusion that DWSD did not have the 14 kind of records that would permit conclusive 15 determination of debt for various projects, and, 16 in fact, that's represented -- you can see it, for 17 example, on Schedule 3.8, halfway down the page 18 under section C, there's a line that says "Meter 19 Credit" -- "Meter Credit MC-S-1 (estimated) 20 400,000" bucks. That's the case where we knew 21 there was work done on meter MC-S-1. Under the 22 rate agreement, Macomb County, and under our 23 contract, Macomb County was not liable for the 24 cost of that work. DWSD had contracted for that 25 work as part of a much larger contract for which</p>	<p style="text-align: right;">Page 48</p> <p>1 County, or was it the situation where their 2 records were just not really very good and a 3 precise answer could not be secured, or do you 4 know? 5 MS. BADALAMENTI: I'm just going to 6 object to foundation. Calls for him to speculate 7 on the motives of Detroit. 8 BY MR. WATSON: 9 Q. Do you have any impression one way or the other 10 on that? 11 A. The longer I dealt with DWSD, the more I became 12 concerned that they could not -- they were not 13 organized internally to accurately keep track of 14 costs, I guess would be my answer, regardless of 15 whatever the motives were on the other side of the 16 table. There were problems back in the DWSD 17 accounting area. 18 Q. I'm looking at page 6 of 25. The system was sold 19 as is? 20 A. 6 of 25? 21 Q. Yeah. 22 A. Which line? 23 Q. Under 2.5 Macomb System. The first sentence 24 reads "The Macomb System shall be conveyed by 25 seller to purchaser in 'as is' physical</p>

<p style="text-align: right;">Page 49</p> <p>1 condition, with no additional warranties, express 2 or implied, with respect to the physical 3 condition of the Macomb system." Then it goes 4 on. Do you see that language? 5 <b>A. Yes.</b> 6 Q. Was it your understanding that the system was 7 being sold as is? 8 <b>A. Yes.</b> 9 Q. Do you recall any discussion during these 10 acquisition agreement negotiations about the 11 reasonableness of the cost of repairs? Was that 12 a matter -- 13 <b>A. This is a discussion with Detroit?</b> 14 Q. With Detroit. First I'll ask, did you have any 15 such discussion with Detroit? 16 <b>A. I don't have a recollection one way or the other.</b> 17 Q. Do you recall anyone else having a discussion 18 with Detroit? 19 <b>MS. BADALAMENTI:</b> I'm going to object 20 to the extent it calls for you to divulge 21 privileged information. Other than that, you can 22 answer. 23 <b>THE WITNESS:</b> I recall a meeting -- I 24 forget whether it was before or after we filed -- 25 Macomb County filed their challenge between -- at</p>	<p style="text-align: right;">Page 51</p> <p>1 information it felt was necessary for it to 2 assure itself that the deal it was entering into 3 was a good one for Macomb? 4 <b>MS. BADALAMENTI:</b> I'm going to object. 5 I think that's a mischaracterization in terms of 6 the document, but you can go ahead. 7 <b>BY MR. WATSON:</b> 8 Q. Well, you don't even have to answer. Let's go to 9 page 12 of 25. I'll withdraw that question. 10 <b>A. I'm looking at 12 of 25.</b> 11 Q. 4.5 Due Diligence. First sentence talks about 12 Macomb acknowledging that it's being afforded the 13 opportunity to conduct due diligence. Did Macomb 14 have that opportunity? 15 <b>A. Within a variety of the limitations I've already</b> 16 <b>described to you, and certainly on the financial</b> 17 <b>front, that was, as a practical matter a limited</b> 18 <b>ability. I would note for the record in this time</b> 19 <b>period DWSD didn't even have a complete audit, so</b> 20 <b>auditors couldn't complete their due diligence and</b> 21 <b>do the audit for DWSD in this time period.</b> 22 Q. Then I'm going to page 18 of 25, section (b), 23 which is a little puzzling. It starts off "This 24 agreement may be terminated by Macomb County in 25 writing on or before January 1, 2010 if it shall</p>
<p style="text-align: right;">Page 50</p> <p>1 the Macomb County Office of Public Works offices, 2 so 2005, I'm guessing is the year. And I don't 3 know whether it was a meeting after we filed a 4 motion or a motion intending to head off the 5 motion challenging the cost, at which Commissioner 6 Marrocco and various staff were present, and at 7 which Mercado and staff and probably lawyers were 8 present, of which Macomb County aired its concern 9 about the project and its cost and reasonableness 10 or unreasonableness of asking Macomb County to pay 11 for the system. 12 <b>BY MR. WATSON:</b> 13 Q. Was that before or after Macomb sued about that? 14 <b>A. I don't remember now. That's the thing. I can't</b> 15 <b>put those -- I don't remember before or after.</b> 16 Q. But that suit was resolved by the 2009 settlement 17 agreement? 18 <b>A. Yeah, that got resolved. You know, we had a</b> 19 <b>number of settlement conferences with Judge</b> 20 <b>Feikens. I don't have a specific recollection,</b> 21 <b>but it would not surprise me if Macomb County's</b> 22 <b>concerns were not aired vigorously by Commissioner</b> 23 <b>Marrocco.</b> 24 Q. Was Macomb County entitled to back out or not 25 sign this agreement if it couldn't secure the</p>	<p style="text-align: right;">Page 52</p> <p>1 not have been satisfied in its sole discretion 2 with the results of Macomb County's continuing 3 due diligence investigations of the Macomb 4 system." Do you see that language? 5 <b>A. I do.</b> 6 Q. And did Macomb have the opportunity to back out 7 if it was not satisfied? 8 <b>A. That's what the language appears to say.</b> 9 Q. Were you ever called to testify before the grand 10 jury? 11 <b>A. What grand jury?</b> 12 Q. The grand jury investigating the Ferguson, 13 Kilpatrick, Miller, Mercado potential wrongdoing 14 at the City of Detroit? 15 <b>A. I was not.</b> 16 Q. Do you know whether any Macomb employees were 17 interviewed by the FBI or U.S. Attorney's Office 18 or testified before the grand jury? 19 <b>A. I have no knowledge.</b> 20 Q. At some point did you become aware of the grand 21 jury investigation? 22 <b>A. Yes.</b> 23 Q. And do you know when that was? 24 <b>A. No.</b> 25 Q. Was it before the indictment that hit the papers</p>

Page 53

Page 55

1 in December 2010?

2 **A. Yes.**

3 Q. And do you know what was the -- your awareness --

4 what do you know about that?

5 **MS. BADALAMENTI:** About what?

6 **BY MR. WATSON:**

7 Q. The grand jury investigation. What's your

8 understanding of the subject matter of the

9 investigation?

10 **A. My understanding was, I guess, whatever I might**

11 **have gotten from the Free Press, that there was a**

12 **corruption probe.**

13 Q. Were you aware Ferguson and Kilpatrick were

14 friends?

15 **A. I have no idea. At some point that was part of**

16 **the newspaper coverage.**

17 Q. So your information is just the newspaper?

18 **A. Whatever I read in the Free Press.**

19 Q. Was there ever any discussion about that

20 corruption and potential corruption in Detroit

21 during the negotiations?

22 **A. I don't recall one way or the other.**

23 Q. Do you recall that there was a settlement

24 agreement -- settlement and release of certain

25 rate disputes executed at the time of the

1 **MR. WATSON:** Because we mentioned it, I

2 should mark that and have him identify it. I

3 don't plan to question him about it.

4 **MARKED FOR IDENTIFICATION:**

5 DEPOSITION EXHIBIT 5

6 9:34 a.m.

7 **BY MR. WATSON:**

8 Q. Let me hand you what's been marked Hupp

9 Exhibit 5. Is that the Macomb Interceptor

10 Acquisition Settlement and Release of Certain

11 Rate Disputes agreement?

12 **A. Yes, it is.**

13 Q. I'm looking at the last page. It appears to be

14 signed by Misterovich and Latimer. Are those the

15 two individuals who signed the acquisition

16 agreement?

17 **A. Yes.**

18 Q. And as far as you recall, was this settlement

19 agreement signed at the same time as the

20 acquisition agreement?

21 **A. Yes, it was.**

22 Q. Did you read the Complaint filed by Macomb County

23 in Macomb Circuit Court against the City of

24 Detroit?

25 **A. I don't believe I have read it.**

Page 54

Page 56

1 acquisition agreement?

2 **A. For MID? For Macomb? Yes.**

3 Q. What was the purpose of that?

4 **A. I think the purpose was two-fold. One, it was --**

5 **biggest thing was to memorialize as best possible**

6 **all of the things that were getting settled,**

7 **because as the settlement agreement, I believe, or**

8 **Letter of Intent reflects, there were a variety --**

9 **and actually the acquisition agreement reflects**

10 **there were a number of pending rate disputes, and**

11 **the transaction was going to affect rates going**

12 **forward. And so the purpose of the agreement was**

13 **to document both what -- to try to concisely state**

14 **what was being settled as well as to try to**

15 **explain how the settlements would affect the rates**

16 **that Detroit was going to set thereafter for**

17 **Macomb County, how they were going to calculate**

18 **the rates now that these assets weren't in the**

19 **rates anymore.**

20 Q. As far as you know, did that settlement and

21 release agreement resolve all of the disputes you

22 knew about between Detroit and Macomb? Was there

23 any disputes outstanding that you were aware of?

24 **A. Based on the facts as we knew them then, I don't**

25 **think so.**

1 Q. Okay. Were you consulted prior to the filing of

2 this Complaint?

3 **A. I was not.**

4 **MARKED FOR IDENTIFICATION:**

5 DEPOSITION EXHIBIT 6

6 9:36 a.m.

7 **BY MR. WATSON:**

8 Q. Let me hand you, Mr. Hupp, what's been marked

9 Exhibit 6. That appears to be an affidavit

10 signed by you filed in United States federal

11 district court.

12 **A. Yes.**

13 Q. Do you recall this affidavit?

14 **A. Yes.**

15 Q. Were you asked to prepare it?

16 **A. Yes.**

17 Q. Did you actually draft this or was it drafted for

18 you?

19 **A. I don't -- I think -- my memory is a little hazy**

20 **on that. I think a draft came to me and I edited**

21 **it, but I'm really not sure enough to really**

22 **answer that conclusively, but I'm pretty sure**

23 **that's what the sequence was.**

24 Q. Do you recall that in the federal district court

25 case Judge Cleland decided that the tort claims

1 arising out of the potential fraudulent  
2 activities pertaining to the sewer collapse  
3 repair belonged to Detroit rather than Detroit?  
4 **A. I'm aware of that.**  
5 Q. And in your affidavit, I believe you state that  
6 had the tort claims -- the gist of it, as I  
7 recall, had these tort claims been considered,  
8 the parties would have decided through the  
9 acquisition agreement to -- that they would  
10 belong to Macomb?  
11 **MS. BADALAMENTI:** I'm not sure I  
12 understand the question. Are you asking him what  
13 he discussed with his client or are you asking him  
14 to read from the affidavit?  
15 **MR. WATSON:** No. Let me rephrase the  
16 question.  
17 **BY MR. WATSON:**  
18 Q. Number one, the tort claims such as the claims  
19 asserted in federal district court, as I  
20 understand, were never brought up or considered  
21 during the negotiation of the settlement  
22 agreement.  
23 **A. I have no recollection of them coming up.**  
24 Q. And in your affidavit you basically state, had  
25 they come up, you have little doubt that the

1 DEPOSITION EXHIBIT 7  
2 9:56 a.m.  
3 **EXAMINATION**  
4 **BY MS. BADALAMENTI:**  
5 Q. I've marked as Exhibit 7, Mr. Hub, a document  
6 titled Minutes of the Due Diligence Coordination  
7 Meetings. This is a revision, and looks like it  
8 is dated 3/19/09, and has written "Draft" in the  
9 background of the document. Do you recognize  
10 this document?  
11 **A. I do.**  
12 Q. Did you prepare or play a role in preparing this  
13 document?  
14 **A. I did. I probably prepared it.**  
15 Q. What was it prepared for?  
16 **A. Basically this was to serve the function -- it**  
17 **states it's minutes. The county had a team of**  
18 **people looking at the transaction and asking**  
19 **various questions and the like. It fell to me**  
20 **probably because I was the one with the secretary**  
21 **as part of the collective group, to do the**  
22 **minutes. And so this reflects, it looks like --**  
23 **for the top meetings, this would have been with**  
24 **what I'll call it at this point in time -- you**  
25 **know, we're all together. We're working through**

1 parties would have agreed that they should go to  
2 Macomb as opposed to Detroit?  
3 **A. That was my opinion of that hypothetical in -- two**  
4 **years ago.**  
5 Q. Now, as an experienced attorney, doesn't Judge  
6 Cleland's decision resolve the issue in regard to  
7 the tort claims?  
8 **MS. BADALAMENTI:** I'm going to object.  
9 It calls for a legal conclusion. He's not here in  
10 his capacity to evaluate the decisions in that  
11 case.  
12 **THE WITNESS:** I don't have an opinion.  
13 I know that case is still going and the right of  
14 appeal is going. I can give you a quote from a  
15 former partner and jurist, if that would help.  
16 **BY MR. WATSON:**  
17 Q. No. I'll ask you after the deposition. Let me  
18 talk to counsel here.  
19 (Off the record at 9:39 a.m.)  
20 (Back on the record at 9:56 a.m.)  
21 **MR. WATSON:** I have no further  
22 questions.  
23 **MS. BADALAMENTI:** I just have a couple  
24 questions.  
25 **MARKED FOR IDENTIFICATION:**

1 **the global settlement that was reached in December**  
2 **of 2008, and now we're in January through March of**  
3 **2009. We're working through the details. And**  
4 **this reflects meetings between representatives of**  
5 **the counties on one side, Oakland and Macomb, and**  
6 **DWSD on the other that would have occurred on**  
7 **these dates, January 29th, March 12th and**  
8 **March 18th.**  
9 Q. So this document refers to due diligence items.  
10 There was due diligence being undertaken by  
11 Macomb and Oakland County?  
12 **A. Yes.**  
13 Q. Taking you to page 8 of this document, the  
14 paragraph 29 indicates that as part of the due  
15 diligence, Macomb and Oakland are looking for the  
16 city to "Describe any regulatory complaints or  
17 notices of violations issued on Detroit or DWSD  
18 in the past 5 years arising out of or related to  
19 the operation of the facilities." Do you see  
20 that?  
21 **A. I do.**  
22 Q. And then italics --  
23 **MR. WATSON:** Can you tell me where are  
24 you with that?  
25 **MS. BADALAMENTI:** 29.



<p style="text-align: right;">Page 61</p> <p>1 <b>MR. WATSON:</b> 29?</p> <p>2 <b>BY MS. BADALAMENTI:</b></p> <p>3 Q. In italics are the names Jacobs and Walter. Why</p> <p>4 are those names italicized there?</p> <p>5 A. <b>The intent was to try to indicate in some cases</b></p> <p>6 <b>the answer we got, the other cases who would</b></p> <p>7 <b>follow up to get the information. The front of</b></p> <p>8 <b>this says "Notes from January 29 are in italics."</b></p> <p>9 <b>I have -- my recollection is the county team put</b></p> <p>10 <b>together a list of questions numbering through 34,</b></p> <p>11 <b>35 or whatever, and at the meeting with DWSD, we'd</b></p> <p>12 <b>go through the questions, and italics reflected</b></p> <p>13 <b>what occurred on January 29th, and then other</b></p> <p>14 <b>typeface to indicate subsequent.</b></p> <p>15 <b>So I believe the reference to Jacobs</b></p> <p>16 <b>and Walter after No. 29 was at that first meeting</b></p> <p>17 <b>in January, Jacobs and Walter, one or the other of</b></p> <p>18 <b>them, two lawyers from Detroit, would get back</b></p> <p>19 <b>with the answer to that question.</b></p> <p>20 Q. And underneath those two names not italicized is</p> <p>21 the word "none." What would that be there for?</p> <p>22 A. <b>That would be their answer that, in fact, there</b></p> <p>23 <b>were no regulatory complaints or notices.</b></p> <p>24 Q. The next paragraph 30 asks the city to "Describe</p> <p>25 any civil claims asserted or threatened in the</p>	<p style="text-align: right;">Page 63</p> <p>1 city to "Describe any facts of which DWSD or</p> <p>2 Detroit is aware which would give rise to or</p> <p>3 support a claim against any contractor or other</p> <p>4 person arising out of or related to the</p> <p>5 facilities and state whether such claim [has]</p> <p>6 been asserted." Do you see that?</p> <p>7 A. <b>I do.</b></p> <p>8 Q. And, again, italicized "Jacobs &amp; Walter will</p> <p>9 address." That would have, again, been</p> <p>10 information provided during the January meetings?</p> <p>11 A. <b>Yes. That would reflect the fact they said we'll</b></p> <p>12 <b>follow up and get you an answer to this.</b></p> <p>13 Q. The non-italicized language underneath there, it</p> <p>14 indicates "DWSD is not aware of any known,</p> <p>15 threatened or pending claims other than those</p> <p>16 identified in ITEM 30." Do you see that?</p> <p>17 A. <b>I do.</b></p> <p>18 Q. That would come from Jacobs and Walters, then,</p> <p>19 from the March meetings; is that correct?</p> <p>20 A. <b>That's correct. My guess with that wording,</b></p> <p>21 <b>that's -- actually that looks like that would have</b></p> <p>22 <b>been their wording, but maybe not. So, yes. And</b></p> <p>23 <b>I would just -- in further answer to your</b></p> <p>24 <b>question, sometimes the answer to this information</b></p> <p>25 <b>might have come back by way of e-mail, so I</b></p>
<p style="text-align: right;">Page 62</p> <p>1 past 5 years arising out of the operation of the</p> <p>2 facilities which have been asserted against</p> <p>3 Detroit/DWSD or of which Detroit has knowledge."</p> <p>4 Do you see that?</p> <p>5 A. <b>Yes.</b></p> <p>6 Q. And the italicized names there are "Jacobs &amp;</p> <p>7 Walter will address." Would that have come,</p> <p>8 again, from the January meeting?</p> <p>9 A. <b>Yes, that would reflect their commitment to come</b></p> <p>10 <b>back and answer that question.</b></p> <p>11 Q. And there are three claims that are identified</p> <p>12 here in response to paragraph 30 in</p> <p>13 non-italicized font. That would be information</p> <p>14 that was provided then from Jacobs and Walters</p> <p>15 during the March meetings; is that correct?</p> <p>16 A. <b>Yes, it certainly came from them, and that matches</b></p> <p>17 <b>the meetings on March 12th and 18, yes. That's</b></p> <p>18 <b>when they would have gotten back. And then this</b></p> <p>19 <b>was kind of -- I think it's apparent this was a</b></p> <p>20 <b>document that just kind of grew with -- just got</b></p> <p>21 <b>edited. Every time we got more information or had</b></p> <p>22 <b>a meeting, the document would get amended to</b></p> <p>23 <b>reflect subsequent information. So that's</b></p> <p>24 <b>information they would have responded to in March.</b></p> <p>25 Q. So then taking you to paragraph 32, 32 asks the</p>	<p style="text-align: right;">Page 64</p> <p>1 <b>couldn't testify here today that that was provided</b></p> <p>2 <b>at a meeting as opposed to at a subsequent</b></p> <p>3 <b>communication, but there would have been a</b></p> <p>4 <b>subsequent communication where they got back to me</b></p> <p>5 <b>and said we're not aware of any known threat or</b></p> <p>6 <b>pending claims.</b></p> <p>7 Q. And they would be Jacobs and Walters on behalf of</p> <p>8 DWSD?</p> <p>9 A. <b>That is correct.</b></p> <p>10 Q. At any point prior to execution of the</p> <p>11 acquisition agreement did anybody from Detroit</p> <p>12 inform you that there was an ongoing criminal</p> <p>13 investigation into the irregularities in DWSD</p> <p>14 construction contracts?</p> <p>15 <b>MR. RUEGGER:</b> Objection to form.</p> <p>16 <b>THE WITNESS:</b> I have no recollection of</p> <p>17 anybody from DWSD saying that.</p> <p>18 <b>BY MS. BADALAMENTI:</b></p> <p>19 Q. If such an investigation had been going on and</p> <p>20 DWSD had notice, was that the information you</p> <p>21 were looking for in response to those three</p> <p>22 paragraphs that are identified in this due</p> <p>23 diligence memo?</p> <p>24 <b>MR. RUEGGER:</b> Objection, form.</p> <p>25 <b>MR. WATSON:</b> I'll object, counselor,</p>

Page 65

Page 67

1 speculation. Object to form.  
 2 **MR. RUEGGER:** Misstates the document.  
 3 **THE WITNESS:** That certainly would have  
 4 been among the things that we wanted to find out  
 5 about and prompted that question.  
 6 **BY MS. BADALAMENTI:**  
 7 Q. Is it your understanding that if Macomb would  
 8 have been informed of such information, it would  
 9 not have executed the acquisition agreement on  
 10 the terms and for the price that it did?  
 11 **MR. RUEGGER:** Objection, form.  
 12 **MR. WATSON:** Object, form, calls for  
 13 speculation.  
 14 **THE WITNESS:** I do not believe it would  
 15 have -- the lawyers' advice would have been stop  
 16 and get to the bottom of this. And I guess I  
 17 can't tell you what Commissioner Marrocco's  
 18 opinion would be because that's privileged.  
 19 **BY MS. BADALAMENTI:**  
 20 Q. The documents that have been put in front of you,  
 21 the Letter of Intent, the Settlement Agreement,  
 22 the Acquisition Agreement, is it your opinion  
 23 that any of these documents seek or require that  
 24 DWSD affirmatively represent whether or not there  
 25 are any such investigations or claims?

1 or rate-related matters contains an untrue  
 2 statement of a material fact or omits to state a  
 3 material fact required to be stated therein or  
 4 necessary to make the statements made, in the  
 5 context in which made, not false or misleading."  
 6 And if Detroit were aware that there was fraud in  
 7 the costs associated with the 2004 collapse,  
 8 certainly as a lawyer I would have advised my  
 9 client that that was material.  
 10 Q. The last question I have is with respect to  
 11 Exhibit 7. I don't think I asked you. I will  
 12 represent to you that this document was produced  
 13 by the City of Detroit in connection with this  
 14 proceeding that your deposition was requested in.  
 15 Do you know how the City of Detroit would have  
 16 obtained your memorandum?  
 17 **A. My general approach with this document was it**  
 18 **started out as a document with a list of items and**  
 19 **questions that would have come from the team to**  
 20 **Detroit. We would have met. I would have**  
 21 **created, as kind of a recording secretary, an**  
 22 **update, and then I would have circulated it to**  
 23 **everyone at the meeting, both on the county side**  
 24 **and Detroit side, with a transmittal e-mail --**  
 25 **transmittal certainly would have been by e-mail**

Page 66

Page 68

1 **MR. RUEGGER:** Objection to form, no  
 2 foundation.  
 3 **MR. WATSON:** I'll join.  
 4 **THE WITNESS:** In fact, I believe that  
 5 the city did undertake obligations to disclose.  
 6 In the settlement agreement -- excuse me. In the  
 7 acquisition agreement, I believe, there is a  
 8 representation by Detroit that they have not made  
 9 any material misstatements or withheld any  
 10 information that would be material to the  
 11 evaluation of the asset being acquired, and that's  
 12 what I'm looking for. I've looked at a number of  
 13 these documents before this deposition. Paragraph  
 14 4.5 on page 12 of 25, in the Hupp Exhibit 3,  
 15 Macomb Acquisition Agreement, at the top of --  
 16 that's not it. I'm sorry. That pertains to  
 17 Macomb's knowledge.  
 18 **BY MS. BADALAMENTI:**  
 19 Q. Let me see if -- are you referring to either  
 20 paragraphs 3.7 or 3.8 of the agreement?  
 21 **A. Yes. It's 3.8. Thank you. The 3.8, the last**  
 22 **sentence provides "None of the written data or**  
 23 **information furnished or made available to Macomb**  
 24 **County by Detroit as part of the due diligence**  
 25 **process with regard to system debt or other debt**

1 with a note that says "Please review my notes from  
 2 the meeting. Advise as to whether there's any  
 3 corrections or additions." And that was my  
 4 routine practice, and so I would expect that  
 5 that's what I did with this, and if this was  
 6 actually produced by Detroit, then I think that  
 7 indicates that drafts went back and forth  
 8 according to my usual practice.  
 9 **MS. BADALAMENTI:** I don't have any  
 10 other questions.  
 11 **RE-EXAMINATION**  
 12 **BY MR. WATSON:**  
 13 Q. I've got a few follow-up. Looking at paragraph  
 14 29 of Hupp Exhibit 7, are you aware of any  
 15 regulatory complaints or notices of violations  
 16 issued on Detroit or DWSD in the past five years  
 17 prior to, I guess, early 2009?  
 18 **MS. BADALAMENTI:** Are you asking if  
 19 he's aware now?  
 20 **BY MR. WATSON:**  
 21 Q. Yeah, are you aware now? Were you aware then?  
 22 Are there any, to your knowledge?  
 23 **A. This would be the period 2004 to 2009, roughly. I**  
 24 **don't know. I wasn't tracking the violations, if**  
 25 **there was environmental complaints. I think**

Page 69

1 that's why we were asking the question.  
 2 Q. Are you aware of any violations? Because this  
 3 says "None." Are you aware that's an untrue  
 4 statement?  
 5 A. Even as I sit here today, I don't know whether  
 6 that's true or untrue.  
 7 Q. Going to 30, it says "Describe any civil claims  
 8 asserted or threatened in the past 5 years," and  
 9 it goes on and they list three. Are you aware of  
 10 any claims in addition to those three?  
 11 A. At what time period?  
 12 Q. Well, are you aware now or were you aware back  
 13 then when DWSD listed the three?  
 14 A. As of the date of the transaction, I was not aware  
 15 of any other civil claims. I don't know whether  
 16 there are any today that are applicable. I don't  
 17 know whether the -- like, for example, the  
 18 corruption stuff qualifies as civil claim or not,  
 19 but we certainly weren't aware of those claims  
 20 then. I certainly wasn't.  
 21 Q. All right. Then it says No. 32, "Describe any  
 22 facts of which DWSD or Detroit is aware which  
 23 would give rise to or support a claim against any  
 24 contractor or other person arising out of or  
 25 related to the facilities and state whether such

Page 70

1 claim has been asserted." Do you see that  
 2 language?  
 3 A. I do.  
 4 Q. And then the response was "DWSD is not aware of  
 5 any known, threatened or pending claims other  
 6 than those identified in item 30." Do you know  
 7 whether or not that was a true statement, that  
 8 DWSD was not aware of any known, threatened or  
 9 pending claims other than those identified in 30?  
 10 A. I don't know what DWSD's knowledge was at that  
 11 time.  
 12 Q. Back in 2009 were you aware of any ongoing  
 13 irregularities that DWSD should have reported but  
 14 didn't?  
 15 MS. BADALAMENTI: Was he aware then?  
 16 Is that what you're asking?  
 17 MR. WATSON: Yeah, back in 2009.  
 18 THE WITNESS: No.  
 19 BY MR. WATSON:  
 20 Q. We talked about -- or you testified about  
 21 paragraph 3.8.  
 22 A. In what document, sir?  
 23 Q. That was in the acquisition agreement, page 11 of  
 24 25.  
 25 A. 3.8?

Page 71

1 Q. Yeah.  
 2 A. Yes.  
 3 Q. And then I believe you focused on the last  
 4 sentence, which reads: "None of the written data  
 5 or information furnished or made available to  
 6 Macomb County by Detroit as part of the due  
 7 diligence process with regard to system debt or  
 8 other debt or rate-related matters contains an  
 9 untrue statement of a material fact or omits to  
 10 state a material fact required to be stated  
 11 therein or necessary to make the statements made,  
 12 in the context in which made, not false or  
 13 misleading." As you sit here today, do you know  
 14 whether or not Detroit breached that provision?  
 15 A. I don't know one way or the other as a matter of  
 16 fact.  
 17 Q. Is it fair to say that you don't know back in  
 18 2009, when these statements were made, what the  
 19 knowledge of Detroit was?  
 20 A. That's correct.  
 21 MR. WATSON: That's all I've got.  
 22 MS. BADALAMENTI: That's it.  
 23 (The deposition was concluded at 10:16 a.m.  
 24 Signature of the witness was not requested by  
 25 counsel for the respective parties hereto.)

Page 72

1 CERTIFICATE OF NOTARY  
 2 STATE OF MICHIGAN )  
 3 ) SS  
 4 COUNTY OF MACOMB )  
 5  
 6 I, MELINDA S. MOORE, certify that this  
 7 deposition was taken before me on the date  
 8 hereinbefore set forth; that the foregoing  
 9 questions and answers were recorded by me  
 10 stenographically and reduced to computer  
 11 transcription; that this is a true, full and  
 12 correct transcript of my stenographic notes so  
 13 taken; and that I am not related to, nor of  
 14 counsel to, either party nor interested in the  
 15 event of this cause.  
 16  
 17  
 18  
 19  
 20  
 21  
 22 MELINDA S. MOORE, CSR-2258  
 23 Notary Public,  
 24 Macomb County, Michigan  
 25 My Commission expires: September 6, 2016